

As the 6th Circuit has stated, “[C]onfidential settlement communications are a tradition in this country” and that “the need for privacy in settlement talks outweigh[s] any First Amendment right of access to the proceedings.” *Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976, 980 (6th Cir. 2003). This is also reflected in the policies underlying Rule 408 of the Federal Rules of Evidence, which deems statements made during settlement negotiations admissible for even impeachment purposes. Fed. R. Evid. 408.² In light of the confidential nature of settlement communications, and the parties’ interests in maintaining that confidentiality outweighing any public interest of access, the ECSBC requests leave to file this portion of its Response to Statement of Additional Undisputed Facts under seal.

Additionally portions of Plaintiffs’ Statement of Additional Undisputed Facts were also redacted, which the ECSBC will in turn file those portions under seal as well. Those portions were based upon designations by other parties. In accordance with Local Rule 5.03(d) the designating parties retain the burden to establish the reasons as to why sealing of this document is necessary as required by Local Rule 5.03(c).

² Knowing it cannot be used as substantive evidence for summary judgment purposes, Plaintiffs filing of this document, even if under seal, was entirely inappropriate.

Respectfully submitted,

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